

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE: CATHODE RAY TUBE (CRT)  
ANTITRUST LITIGATION

) MDL No. 1917

) Case No. C-07-5944-SC

This Order Relates To:

) ORDER RE: THOMSON DISCOVERY

Sharp Electronics Corp. v. Hitachi  
Ltd., No. C-13-1173-SC;

Electrograph Systems, Inc. v.  
Technicolor SA, No. 13-cv-05724;

Siegel v. Technicolor SA, No. 13-  
cv-05261;

Best Buy Co., Inc. v. Technicolor  
SA, No. 13-cv-05264;

Target Corp. v. Technicolor SA,  
No. 13-cv-05686

Interbond Corporation of America  
v. Technicolor  
SA, No. 13-cv-05727;

Office Depot, Inc. v. Technicolor  
SA, No. 13-cv-05726;

Costco Wholesale Corporation v.  
Technicolor SA, No. 13-cv-05723;

P.C. Richard & Son Long Island  
Corporation v. Technicolor SA, No.  
13-cv-05725;

Schultze Agency Services, LLC v.  
Technicolor SA, Ltd., No. 13-cv-  
05668;

Sears, Roebuck and Co. and Kmart  
Corp. v. Technicolor SA, No. 3:13-  
cv-05262;

Tech Data Corp., et al. v.  
Hitachi, Ltd., et al., No. 13-cv-  
00157;

Crago, et al. v. Mitsubishi Elec.  
Corp., et al., No. 14-cv-02058.

**I. INTRODUCTION**

Now before the Court are several issues related to the Direct Action Plaintiffs' ("DAPs") discovery efforts against Defendants Thomson SA and Thomson Consumer ("Thomson"). First, Thomson objects to the Special Master's<sup>1</sup> Recommended Order, ECF No. 2812 ("R&R") granting DAPs', led by Sharp, motion to compel production of various documents and witnesses in France pursuant to the Federal Rules of Civil Procedure. ECF No. 2849 ("Obj."). Without prejudice to the motion to compel, DAPs seek similar discovery via the issuance of letters of request for international judicial assistance in the production of documents, ECF No. 2716 ("Docs. Mot."), and depositions in France, ECF No. 2776 ("Depos. Mot."), pursuant to the procedures of the Hague Convention.<sup>2</sup> Finally, in light of the passage of the fact discovery deadline on September 5, 2014, DAPs seek to extend the deadline to permit the aforementioned productions and depositions to take place. ECF No. 2773 ("Deadline Mot."). The motions and objection are fully briefed,<sup>3</sup> and appropriate for resolution without oral argument under Civil Local Rule 7-1(b). For the reasons set forth below, the Court DENIES Thomson's objection and GRANTS DAPs' motion to compel. Having found that DAPs need not resort to Hague Convention procedures in

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<sup>1</sup> On December 17, 2013 the Court appointed the Honorable Vaughn R. Walker, United States District Judge (Retired), as a Special Master to assist the Court with discovery matters. ECF No. 2272.

<sup>2</sup> Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, Mar. 18, 1970, 23 U.S.T. 2555, T.I.A.S. No. 7444 (codified at 28 U.S.C. § 1780) ("Hague Convention").

<sup>3</sup> ECF Nos. 2727 ("Docs. Opp'n"); 2782 ("Depos. Opp'n"); 2783 ("Deadline Opp'n"). Plaintiff ViewSonic Corporation also submitted a brief memorandum in support of DAPs' motion to extend the discovery deadline. ECF No. 2778 ("Viewsonic Br.").

1 seeking the documents and depositions at issue, DAPs are ORDERED to  
2 file a statement explaining whether they intend to proceed with  
3 their motions for the issuance of letters of request. Finally, the  
4 Court GRANTS DAPs' motion to extend the cutoff for discovery of  
5 Thomson.

6  
7 **III. BACKGROUND**

8 The parties are familiar with the factual and procedural  
9 background of the case. DAPs, led by Sharp, seek discovery of  
10 documents and witnesses in France. Specifically, DAPs pursue  
11 documents held by Thomson in France that are relevant to Thomson's  
12 communications with competitors and aspects of Thomson's CRT  
13 business, and documents produced to various foreign regulatory  
14 agencies during prior investigations related to price fixing in the  
15 CRT industry. Those include documents produced during a 2012  
16 European Commission ("EC") investigation that found Defendants  
17 participated in a price fixing cartel for CRTs. See Docs. Mot. at  
18 4-5. DAPs also wish to depose four former Thomson employees in  
19 France who have been identified as potential participants in  
20 meetings related to the alleged CRT conspiracy. Depos. Mot. at 2.  
21 To provide time for this discovery to take place, the DAPs request  
22 extension of the fact discovery deadline. Deadline Mot. at 4-5.

23 DAPs propose two alternative means of obtaining this  
24 discovery. First, DAPs argue that, notwithstanding the provisions  
25 of the so-called French Blocking Statute,<sup>4</sup> the Federal Rules of

26 <sup>4</sup> See Loi No. 80-538 du 16 juillet 1980 relative à la communication  
27 de documents et renseignements d'ordre économique, commercial ou  
28 technique à des personnes physiques ou morales étrangères [Law 80-  
538 of July 16, 1980 relating to the Communication of Economic,  
Commercial, Industrial, Financial or Technical Documents or

Civil Procedure should govern the discovery sought here. Without prejudice to that position, DAPs propose the Court issue letters of request for international judicial assistance in obtaining the documents and depositions sought. Thomson disagrees with both positions, arguing (1) that permitting discovery to go forward under the Federal Rules of Civil Procedure will, by virtue of the French Blocking Statute, subject them to possible French criminal sanctions for compliance, and (2) DAPs' letters of request are overly broad, unduly burdensome, and do not comply with the Hague Convention and French government's requirements for international discovery requests.

DAPs' first position, that the discovery sought should be obtained through the Federal Rules of Civil Procedure, was raised in a motion to compel production of documents and a Rule 30(b)(6) deponent before the Special Master. In that motion, DAPs contended that the Supreme Court's decision in Société Nationale Industrielle Aérospatiale v. United States District Court for the Southern District of Iowa, 482 U.S. 522 (1987) ("Aérospatiale"), forecloses any obligation to resort first to Hague Convention procedures.

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Information to Foreign, Natural or Legal Person], J. Officiel de la République Française [J.O.] [Official Gazette of France], July 17, 1980, p. 1799 ("French Blocking Statute").

The law provides:

"Subject to treaties or international agreements and applicable laws and regulations, it is prohibited for any party to request, seek or disclose, in writing, orally or otherwise, economic, commercial, industrial, financial or technical documents or information leading to the constitution of evidence with a view to foreign judicial or administrative proceedings or in connection therewith."

Société Nationale Industrielle Aérospatiale v. United States Dist. Ct. for the So. Dist. of Iowa, 482 U.S. 522, 527 n.6 (1987).

1 Instead, DAPs argued that under the factors identified in  
 2 Aerospatiale, DAPs' interest in obtaining this discovery outweighed  
 3 the interests of international comity that might otherwise compel  
 4 them to seek discovery through the Hague Convention. The Special  
 5 Master concurred, finding that Sharp and the DAPs need not resort  
 6 to the Hague Convention procedures,<sup>5</sup> they "may be well advised to  
 7 proceed simultaneously under the more cumbersome procedures of the  
 8 Hague Convention" and as a result, the Special Master suggested the  
 9 Court give its prompt attention to DAPs' motions for issuance of  
 10 letters of request. R&R at 6.

11 Now Thomson objects.  
 12

### 13 **III. LEGAL STANDARDS**

#### 14 **A. Review of Orders by the Special Master**

15 The Court reviews the Special Master's factual findings for  
 16 clear error, his legal conclusions de novo, and his procedural  
 17 decisions for abuse of discretion. Fed. R. Civ. P. 53(f)(3)-(5);  
 18 ECF No. 302 (appointing the previous special master).

#### 19 **B. Discovery of Evidence Located Abroad**

20 The Federal Rules of Civil Procedure authorize party-initiated  
 21 discovery of any evidence that is relevant to any party's claims or  
 22 defenses. Fed. R. Civ. P. 26(b)(1). However, Rule 26 grants the  
 23 court discretion to limit discovery on several grounds, including  
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25 <sup>5</sup> The Special Master did, however, deny the motion to compel as to  
 26 one category of documents he found might run afoul of the  
 27 undersigned's prior order foreclosing discovery of the European  
 28 Commission's investigation and confidential decision involving  
 these Defendants. See In re Cathode Ray Tube (CRT) Antitrust  
Litig., No. 07-cv-5944-SC, 2014 WL 1247770, at \*2-4 (N.D. Cal. Mar.  
 26, 2014). That decision is currently the subject of a renewed  
 motion to compel by DAPs. ECF No. 2843.

international comity. See Aerospatiale, 482 U.S. at 544.

The Supreme Court and the Ninth Circuit agree that comity and foreign law alone are not dispositive when a discovery dispute arises regarding a foreign law's protection of documents sought in a United States court. See id. at 544 & n.29; Societe Internationale Pour Participations Industrielles et Commerciales v. Rogers, 357 U.S. 197, 208 (1958); Richmark Corp. v. Timber Falling Consultants, 959 F.2d 1468, 1474-75 (9th Cir. 1992). The Court must consider the following factors in determining whether or not foreign law excuses noncompliance with a United States court's discovery orders:

(1) the importance to the . . . litigation of the documents or other information requested; (2) the degree of specificity of the request; (3) whether the information originated in the United States; (4) the availability of alternative means of securing the information; and (5) the extent to which noncompliance with the request would undermine important interests of the United States, or compliance with the request would undermine important interests of the state where the information is located.

Aerospatiale, 482 U.S. at 544 n.28. This list is not exhaustive. The Ninth Circuit has also considered other factors, including "the extent and the nature of the hardship that inconsistent enforcement would impose upon the person, . . . [and] the extent to which enforcement by action of either state can reasonably be expected to achieve compliance with the rule prescribed by that state." United States v. Vetco, Inc., 691 F.2d 1281, 1287 (9th Cir. 1981); see also Richmark, 959 F.2d at 1475.

### C. Modification of Scheduling Orders

Scheduling orders "may be modified only for good cause and with the judge's consent." Fed. R. Civ. P. 16(b)(4). Pretrial

1 scheduling orders may be modified if the dates scheduled "cannot  
2 reasonably be met despite the diligence of the party seeking the  
3 extension." Johnson v. Mammoth Recreations, Inc., 975 F.2d 604,  
4 609 (9th Cir. 1992). The focus of the good cause inquiry is "on  
5 the moving party's reasons for seeking modification. If that party  
6 was not diligent, the inquiry should end." Id.

#### 7 8 **IV. DISCUSSION**

9 The Court addresses three main issues in this order. First,  
10 Thomson's objections to the Special Master's report and  
11 recommendation granting Sharp and DAPs' motion to compel Thomson to  
12 produce documents and deponents under the Federal Rules of Civil  
13 Procedure. After concluding that the motion to compel should be  
14 granted, the Court then turns to DAPs' parallel requests for the  
15 same or similar discovery by means of letters of request for  
16 international judicial assistance, and DAPs' motion to extend the  
17 discovery deadline to permit the discovery at issue to take place.

##### 18 **A. Objection to Special Master's Recommendation**

19 In granting Sharp's motion, the Special Master made three  
20 findings Thomson considers objectionable. First, the Special  
21 Master apparently misinterpreted a letter received from the French  
22 Ministry of Foreign Affairs stating that the provisions of the  
23 Blocking Statute are "mandatory," and as a result, Thomson  
24 concludes his analysis is "premised on a fundamental error." Obj.  
25 at 1. Second, Thomson argues the "extraordinary expense and  
26 burden" imposed by DAPs' requests, id. at 2, belies the Special  
27 Master's conclusion that the discovery sought could be "completed  
28 in a matter of weeks, not months or years." R&R at 7. Finally,

1 Thomson seizes upon the Special Master's observation that the Court  
2 might cure possible prejudice resulting from these late discovery  
3 requests in addressing forthcoming proposals for structuring the  
4 trials in these matters, and argues that separate treatment would  
5 "severely prejudice Thomson . . . ." Obj. at 2.

6 The Court reviews each issue de novo.

7 **1. Blocking Statute and International Comity**

8 Thomson's chief objection to the Special Master's report and  
9 recommendation relates to the French Blocking Statute. Perhaps no  
10 single law better illustrates the gulf between American and civil  
11 law countries' attitudes toward pre-trial discovery than the  
12 Blocking Statute. See Diana Lloyd Muse, Note, Discovery in France  
13 and the Hague Convention: The Search for a French Connection, 64  
14 N.Y.U. L. Rev. 1073, 1073-78 (1989) (reviewing the historical,  
15 social, and cultural context of the Blocking Statute). As the  
16 Special Master put it, were the Blocking Statute to be applied  
17 literally, it "would thwart much of the normal process of discovery  
18 from French nationals and of evidence located in that country."  
19 R&R at 4-5.

20 In short, the parties disagree as to what extent, if any, the  
21 interests in international comity embodied in the Hague Convention  
22 should compel DAPs to refine their requests and resort to the  
23 Convention's letters of request process so as to avoid running  
24 afoul of the Blocking Statute. DAPs argue that because the Supreme  
25 Court held in Aerospatiale that the Hague Convention's procedures  
26 for obtaining discovery abroad serve as a "permissive supplement,  
27 not a pre-emptive replacement, for other means of obtaining  
28 evidence abroad," 482 U.S. at 539-40, and the comity factors

1 identified by the Court and the Ninth Circuit weigh in their favor,  
2 the Court should order Thomson to submit to discovery pursuant to  
3 the Federal Rules of Civil Procedure. Thomson disagrees, citing a  
4 letter from an official at the French Ministry of Foreign Affairs  
5 suggesting that the Blocking Statute's provisions are "mandatory,"  
6 and that Hague Convention procedures are "potentially applicable in  
7 this case." As a result, Thomson argues it may be subjected to  
8 potential criminal sanctions if it were compelled to produce these  
9 documents or witnesses outside the Hague Convention process. See  
10 Docs. Opp'n at 2-3 (citing In re Advocat Christopher X., Cour de  
11 cassation [Cass. Crim.], Paris, crim., Dec. 12, 2007, Bull. crim.,  
12 No. 7168 [JurisData No. 2007-83228] (Fr.) (fining a lawyer €10,000  
13 for violating the blocking statute)).

14 As mentioned before, the Court considers a series of factors  
15 in weighing whether foreign laws like the French Blocking Statute  
16 excuse compliance with an American discovery requests.  
17 Specifically the Court considers: (1) the importance of the  
18 discovery to this litigation, (2) the specificity of the requests,  
19 (3) the origin of the information sought, (4) whether alternative  
20 means are available to obtain the discovery, (5) the interests of  
21 the United States and foreign state, (6) the extent of hardship,  
22 and (7) "the extent to which enforcement by action of either state  
23 can reasonably be expected to achieve compliance with the rule  
24 prescribed by that state." 2014 WL 1247770, at \*2 (quoting  
25 Aerospatiale, at 544 n.28; Vetco, 691 F.2d at 1287).

26 The parties agree that the information sought originated in  
27 France, and as a result, that factor weighs in favor of denying the  
28 motion to compel. The Court will address each remaining factor in

1 turn.

2 **a. Importance of the Discovery Sought**

3 First, the discovery sought is highly significant to this  
4 litigation. Courts are often more likely to heed a foreign state's  
5 concerns when the case "does not stand or fall on the present  
6 discovery order," or if the evidence sought is cumulative,  
7 Richmark, 959 F.2d at 1475; In re Rubber Chems. Antitrust Litig.,  
8 486 F. Supp. 2d 1078, 1081 (N.D. Cal. 2007). Here, while it is  
9 possible DAPs would be able to prove their claims against Thomson  
10 without access to this discovery, doing so would be challenging to  
11 say the least. For example, DAPs seek discovery into Thomson's  
12 communications and meetings with competitors. This information is  
13 crucial to DAPs' liability case against Thomson and may inform  
14 their liability cases against the other alleged co-conspirators.

15 Nevertheless, some other materials sought, while relevant, are  
16 perhaps less important to this litigation. For instance, documents  
17 produced to the European Commission ("EC") in its confidential  
18 investigation of the same alleged cartel are likely to be largely  
19 cumulative of other DAPs' other requests. Finally, while documents  
20 and information regarding the disposition of Thomson's CRT business  
21 are certainly relevant for discovery purposes, DAPs have not made  
22 immediately clear how central those documents are to this  
23 litigation.

24 Despite these flaws, on balance this factor weighs strongly in  
25 favor of granting the motion to compel.

26 **b. Specificity of the Requests**

27 Second, while always staying within the bounds of permissible  
28 discovery under the Federal Rules, at times DAPs requests sweep

1 quite broadly. "[G]eneralized searches for information whose  
2 disclosure is prohibited under foreign law are discouraged."  
3 Rubber Chems., 486 F. Supp. 2d at 1083 (citing Richmark, 959 F.2d  
4 at 1475). Thomson argues that many of DAPs' requests are  
5 imprecise, overly broad, burdensome, or seek information that has  
6 already been produced by Thomson Consumer. In particular, Thomson  
7 takes issue with DAPs' requests for production of documents related  
8 to (1) Thomson Consumer's relationship with Thomson SA, (2) the  
9 disposition of Thomson's CRT business, and (3) the European  
10 Commission's confidential investigation of Thomson and other  
11 Defendants in this case. See ECF No. 2716-2 ("Benson Letters  
12 Decl.") Ex. A ("RFP") Requests Nos. 33, 35-37, 42, 46-60.

13 Several of Thomson's complaints have merit. For instance,  
14 Request Number 33 calls for:

15  
16 All Documents relating to any contemplated, proposed,  
17 planned, pending or executed purchases, sales,  
18 acquisitions, mergers, joint ventures, divestitures,  
19 transfers, spin-offs or any other change in ownership of  
any assets, liabilities, subsidiaries, departments, units  
or other subdivisions of Your or another company relating  
to production, distribution, marketing, pricing, sale or  
resale of CRTs during the Relevant Period.

20 While this request certainly satisfies the test for relevance in  
21 discovery, Rule 26(b)(1), the request is also likely to capture a  
22 significant amount of irrelevant information. At the same time,  
23 many, if not most, of DAPs' requests are narrowly-tailored and fall  
24 far short of "generalized searches for information." Rubber Chems.  
25 486 F. Supp. 2d at 1083 (citation omitted). For instance Request  
26 Number 2 asks for the identity of executives or employees in  
27 management positions with respect to specifically enumerated  
28 aspects of Thomson's CRT business. See ECF No. 2773-1 ("Benson

1 Decl.") Ex. 9 at 9.

2 As a result this factor weighs only minimally against granting  
3 the motion to compel.

4 **c. Availability Through Alternative Means**

5 Third, while these documents are nominally available through  
6 Hague Convention procedures, at this stage they may be unavailable  
7 as a practical matter. "If the information sought can easily be  
8 obtained elsewhere, there is little or no reason to offend foreign  
9 law." Rubber Chems., 486 F. Supp. 2d at 1083.

10 At this late date, it would be difficult, if not impossible,  
11 for DAPs to obtain the discovery expeditiously through Hague  
12 Convention procedures. As an empirical study of Hague Convention  
13 document and deposition requests found, France is particularly slow  
14 to execute Hague Convention requests, and when they are executed,  
15 often the results are unsatisfactory.<sup>6</sup> Furthermore, while Thomson  
16 complains that some categories of evidence are available in the  
17 U.S. and have already been produced, most of the information sought  
18 in the motion to compel must be obtained one way or another from  
19 France.

20 Accordingly, the lack of alternative means for obtaining much  
21 of the information sought weighs strongly in favor of production.

22 **d. The Interests of the United States and France**

23 Fourth, the strong national interests of the United States are  
24 at play. This is a case alleging violations of United States

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26 <sup>6</sup> See Am. Bar Ass'n, Int'l Litig. Comm., Section of Int'l L. &  
27 Prac., Report on Survey of Experience of U.S. Lawyers with the  
28 Hague Evidence Convention Letter of Request Procedures, at 7, 10-  
11, n.16 (Oct. 9, 2003) ("ABA Report"), available at:  
[http://www.hcch.net/upload/wop/lse\\_20us.pdf](http://www.hcch.net/upload/wop/lse_20us.pdf).

1 antitrust laws, laws that are of "fundamental importance to  
2 American democratic capitalism." Mitsubishi Motors Corp. v. Soler  
3 Chrysler-Plymouth, Inc., 473 U.S. 614, 634 (1985). As the Supreme  
4 Court has recognized, enforcement of the antitrust laws through  
5 private civil actions is an important part of encouraging  
6 compliance with those laws. See Hawaii v. Std. Oil Co. of Cal.,  
7 405 U.S. 251, 262 (1972). On the other hand, France's interests  
8 here are significantly weaker. To be sure, France has an interest  
9 in controlling foreign access to information within its borders,  
10 and in protecting its citizens from foreign discovery practices it  
11 views as antithetical to the French legal culture. Nevertheless,  
12 France also shares an interest in preventing price-fixing behavior,  
13 as is demonstrated by the European Commission's investigation and  
14 confidential decision involving price-fixing allegations in the CRT  
15 market. See 2014 WL 1247770, at \*1 (describing the European  
16 Commission decision); see also In re Air Cargo Shipping Servs.  
17 Antitrust Litig., 278 F.R.D. 51, 54 (E.D.N.Y. 2010) (noting that  
18 "France, given its membership in the European Economic  
19 Community . . . " has also adopted prohibitions against price-  
20 fixing). The national interests in enforcement of antitrust laws  
21 are "only realized if the parties have access to relevant  
22 discovery." Air Cargo, 278 F.R.D. at 54.

23 As a result, the United States' strong national interests  
24 weigh in favor of granting the motion to compel.

25 **e. Extent of Hardship**

26 Fifth, while Thomson argues this factor weighs strongly in its  
27 favor, its position is weaker than it may initially appear.  
28 Specifically, Thomson points to the potential for criminal

1 sanctions if they comply with discovery requests outside the Hague  
2 Convention process and a letter from the French Ministry of Foreign  
3 Affairs stating that the provisions of the Blocking Statute are  
4 "mandatory." Obj. at 1. Furthermore, they argue that the Special  
5 Master misinterpreted this letter when he concluded that it stems  
6 from an "unrelated matter . . . ." R&R at 5.

7 Thomson is right that the Special Master misinterpreted the  
8 letter, however that is not enough to tip the scales on this factor  
9 heavily in their favor. While the Supreme Court has stated that  
10 "fear of criminal prosecution constitutes a weighty excuse for  
11 nonproduction," Aerospatiale, 357 U.S. at 211, many courts have  
12 discounted that risk in the context of the French Blocking Statute,  
13 noting that the Blocking Statute "does not subject defendants to a  
14 realistic risk of prosecution . . . ." Bodner v. Banque Paribas,  
15 202 F.R.D. 370, 375 (E.D.N.Y. 2000); see also Air Cargo, 278 F.R.D.  
16 at 53-54; Strauss v. Credit Lyonnais, S.A., 249 F.R.D. 429, 454-55  
17 (E.D.N.Y. 2008); Adidas (Canada) Ltd. v. SS Seatrain Bennington,  
18 Nos. 80 Civ. 1911, 82 Civ. 0375, 1984 WL 423, at \*3 (S.D.N.Y. May  
19 30, 1984). In fact, the legislative history of the Blocking  
20 Statute "gives strong indications that it was never expected or  
21 intended to be enforced against French subjects but was intended  
22 rather to provide them with tactical weapons and bargaining chips  
23 in foreign courts." Adidas, at \*3.

24 Furthermore, Thomson's reliance on a case in which a French  
25 court imposed a monetary sanction for violating the Blocking  
26 Statute is misplaced. That case, In re Advocat Christopher X,  
27 involved a French attorney who made false statements to a potential  
28 French witness in an effort to obtain evidence to be used in a case

1 pending in California. See Air Cargo, 278 F.R.D. at 54  
2 (summarizing the facts of Christopher X). Christopher X did not  
3 involve discovery requests made in the California litigation nor  
4 did it involve a court order compelling production under protest.  
5 Id. Thomson has pointed to no similar case, nor indeed any other  
6 case, in which the Blocking Statute was enforced against a French  
7 company. As such the Court finds the risk of prosecution in this  
8 case, if any, is minimal. This is true even in light of the  
9 Ministry of Foreign Affairs' letter in this litigation. Notably,  
10 nowhere does the letter suggest or threaten prosecution for  
11 complying with discovery requests or orders in this litigation.  
12 Instead, as at least one other court has found in considering (and  
13 rejecting) a similar letter, the letter "does little more than  
14 generally state [France's] interest in sovereignty and restate . .  
15 . that French civil and criminal laws prohibit [Thomson] from  
16 disclosing . . . the information in dispute here." Strauss, 249  
17 F.R.D. at 448.

18 In short, neither the letter nor the specter of potential  
19 criminal prosecution is enough to convince the Court that this  
20 factor weighs anything more than minimally in Thomson's favor.

21 **f. Conclusion**

22 Having considered the relevant factors, they weigh in favor  
23 of permitting discovery to go forward in France pursuant to the  
24 Federal Rules of Civil Procedure. Accordingly, on this point  
25 Thomson's objection is DENIED.

26 **2. Remaining Objections**

27 Having found that the factors in Aerospatiale favor production  
28 pursuant to the Federal Rules, the Court must turn now to Thomson's

1 remaining two objections. First, Thomson contends that the Special  
2 Master failed to appropriately weigh the burdens of production.  
3 Obj. at 3-5. Second, Thomson objects to the Special Master's  
4 passing reference to trial phasing and Federal Rule of Civil  
5 Procedure 42(b) bifurcation motions to the extent he suggested that  
6 Thomson's claims may be tried on a different schedule than the  
7 other Defendants'. Obj. at 5.

8 The Rule 42(b) issue can be dispensed with quickly. Nowhere  
9 was the Special Master suggesting that Thomson's case should be  
10 tried on a separate schedule than the remaining Defendants'.  
11 Instead, the Court reads the Special Master to have simply pointed  
12 out the possibility that in ruling on the (then unseen) Rule 42(b)  
13 motions, the Court might factor in unfinished discovery issues.  
14 Now that those motions have been filed, it appears that neither  
15 side is seeking to try any of the Defendants on a separate schedule  
16 than the others, and the Court is acutely aware of the potential  
17 prejudice that Thomson would suffer were their claims to be tried  
18 on a different schedule. See ECF No. 2897 ("IPP & DAP 42(b)  
19 Mot."); 2903 ("Best Buy Joinder"); 2914 ("Defs.' 42(b) Cross-  
20 Mot."). As a result, the Court sees no reason the Special Master's  
21 aside regarding the Rule 42(b) motions undermines his (or the  
22 Court's) conclusion that DAPs are entitled the discovery at issue  
23 here.

24 The issue of the burdens of discovery is more complicated, but  
25 ultimately does not alter the Court's conclusion. In support of  
26 their objection on this basis, Thomson provides only scant citation  
27 to authority, but the Court takes their objection to be based on  
28 Rule 26's requirement that the Court limit discovery if it

1 determines that the discovery sought is "unreasonably cumulative or  
2 duplicative," "the party seeking discovery has had ample  
3 opportunity to obtain the information," or the burden of discovery  
4 outweighs its expected benefits. Fed. R. Civ. P. 26(b)(2)(C)(i)-  
5 (iii). Specifically Thomson argues that the Special Master was  
6 wrong when he concluded that "diligent efforts and cooperation  
7 between the parties should allow the discovery sought here to be  
8 completed in a matter of weeks, not months or years . . . ," and in  
9 any event, because DAPs have long been aware of the information  
10 they seek, the Court should deny the motion to compel. See Obj. at  
11 5 (citing Rule 26(b)(2)(C)(ii) for the proposition that Courts must  
12 limit discovery where "the party seeking discovery has had ample  
13 opportunity to obtain the information.").

14 The Court is not entirely unsympathetic to Thomson's  
15 complaints. As the Court previously observed, some of DAPs'  
16 requests are indeed broad. Furthermore, Thomson's financial  
17 situation does appear to be less secure than that of many of the  
18 other Defendants. Nonetheless, DAPs' requests are indisputably  
19 relevant, and even if not perfectly tailored, they are essential to  
20 DAPs' case against Thomson. As Rule 26(b)(2)(C)(i) expressly  
21 contemplates, sometimes discovery may be somewhat cumulative or  
22 duplicative while nonetheless being permissible. See id. (stating  
23 the court must limit discovery if it is "unreasonably cumulative or  
24 duplicative") (emphasis added). Furthermore, "broad discovery may  
25 be needed to uncover evidence of invidious design, pattern, or  
26 intent" in antitrust cases. In re Urethane Antitrust Litig., 261  
27 F.R.D. 570, 573 (D. Kan. 2009) (quoting source). Accordingly, the  
28 Court finds no need to limit discovery on the bases enumerated in

1 Rule 26(b)(2)(C)(i).

2 Second, Thomson's suggests that, because DAPs have been aware  
3 of the information sought since "sometime between 2011 and 2013,"  
4 the Court should deny them access to the information now. Thomson  
5 is mistaken on this point as well. First, it is difficult to  
6 conclude that DAPs have had "ample opportunity to obtain the  
7 information" at issue here given that discovery was stayed during  
8 the pendency of Thomson's motion to dismiss. Benson Decl. at Ex. 3  
9 ("Order Staying Discovery"). Because of the stay, discovery  
10 against Thomson only began after March 13, 2014, when the Court  
11 denied Thomson's motion to dismiss. ECF No. 2240 ("Thomson MTD  
12 Order"). Furthermore it appears that DAPs have been  
13 extraordinarily diligent since that date, seeking the instant  
14 discovery as of April 2014 -- roughly a month after discovery of  
15 Thomson began -- and furnishing to the Court numerous other  
16 discovery requests also served on Thomson during that period.  
17 Benson Decl. ¶¶ 16-32 (showing numerous discovery requests since  
18 April 2014); ¶¶ 33-41 (outlining Sharp's initial efforts to seek  
19 the specific materials at issue here and the subsequent attempts to  
20 resolve those issues through meeting and conferring). Accordingly,  
21 the Court cannot find DAPs had "ample" opportunity to obtain this  
22 discovery sooner.

23 Finally, even if Thomson is right that the discovery sought  
24 will take longer than the Special Master suggested, that does not  
25 fatally undermine Judge Walker's recommendation. After all, based  
26 on their motion to extend the discovery deadline, DAPs appear to  
27 believe that the discovery at issue here can be completed within  
28 sixty days of the signature date of this order. See Deadline Mot.

1 at 4. Thomson has offered no suggestions as to how long would be  
2 necessary to review and produce the documents at issue here, aside  
3 from saying that granting DAPs' requests will push discovery  
4 "months past the September 5, 2014 deadline," and "make it  
5 extremely difficult . . . to prepare for a March 2015 trial." Obj.  
6 at 4. Thomson's complaints about the challenges of translation and  
7 the size of the necessary productions are well met, but tempered by  
8 the fact that Thomson's production to date of 15,799 documents is  
9 paltry in the context of this large and complex case. See Benson  
10 Decl. ¶¶ 6-7 (comparing Thomson's production with the approximately  
11 1.2 million documents produced by all defendants). Finally, even  
12 if the discovery at issue here is burdensome, Rule 26 once again  
13 recognizes that the burden of discovery must be weighed against its  
14 likely benefit. Rule 26(b)(2)(C)(iii). As the Court has  
15 repeatedly found, these materials are essential for DAPs' case  
16 against Thomson. Accordingly, even considering the burdens of  
17 production on Thomson, the Court finds they are offset by the  
18 benefits of permitting this discovery.

### 19 **3. Conclusion**

20 Having considered Thomson's objections to the Special Master's  
21 report and recommendations, the objection is DENIED. Accordingly,  
22 DAPs' motion to compel is GRANTED.

### 23 **B. Remaining Motions**

24 Having rejected Thomson's objections, two issues remain:  
25 First, DAPs' motions for the issuance of letters of request, and  
26 second, DAPs' motion to extend the discovery deadline.

27 The Court believes that DAPs' motions for the issuance of  
28 letters of request may be denied as moot. However, the record is

1 not sufficiently clear for the Court to do so at this time. For  
2 instance, in DAPs' motion to compel before the Special Master, DAPs  
3 appear to seek only documents and perhaps just one Rule 30(b)(6)  
4 deponent. R&R at 2. Nonetheless DAPs' motion for the issuance of  
5 letters of request seeks depositions of four witnesses.  
6 Accordingly, within five (5) days of the signature date of this  
7 order, Sharp is ORDERED to file a statement of not more than four  
8 (4) pages explaining whether it wishes to continue to press its  
9 motions for the issuance of letters of request. If Sharp does not  
10 file the statement within five days, the Court will deny the  
11 motions for letters of request as moot.

12 Turning finally to Sharp's motion for an extension of the  
13 discovery deadline, the Court finds that Sharp and DAPs have  
14 diligently pursued discovery against Thomson and good cause exists  
15 to extend the discovery deadline. As the Ninth Circuit has  
16 observed, scheduling orders may be modified for good cause, and any  
17 analysis of good cause focuses "on the moving party's reasons for  
18 seeking modification. If that party was not diligent, the inquiry  
19 should end." Johnson, 975 F.2d at 609. The Court has previously  
20 observed that "centering the good cause analysis on the moving  
21 party's diligence prevents parties from profiting from  
22 carelessness, unreasonability, or gamesmanship, while also not  
23 punishing parties for circumstances outside their control." ECF  
24 No. 2877 ("Cal. AG Discover Order"), at 5 (citing Orozco v. Midland  
25 Credit Mgmt. Inc., No. 2:12-cv-02585-KJM-CKD, 2013 WL 3941318, at  
26 \*3 (E.D. Cal. July 30, 2013)).

27 Ultimately, the diligence inquiry comes down to two questions.  
28 First, did Sharp and DAPs unreasonably delay in seeking this

1 discovery given that they knew or should have known of the  
2 potential relevance of this discovery earlier? Second, did DAPs  
3 act diligently after discovering Thomson's position on the  
4 applicability of the French Blocking Statute? ECF No. 2554  
5 ("Thomson Discovery Stip.") at 4 (emphasis added).

6 First, in Thomson's view, "it is undisputed that the DAPs knew  
7 of the potential relevance of" certain witnesses "no later than  
8 August 2013," yet failed to seek deposition testimony from them  
9 until much later. However, as the Court noted earlier, discovery  
10 of Thomson was stayed for much of that time, and it appears that  
11 DAPs specifically inquired as to the status of several of the  
12 witnesses at issue on April 11, 2014, approximately a month after  
13 the discovery stay was lifted. Benson Decl. at Ex. 8. Moreover,  
14 also approximately a month after discovery of Thomson began, DAPs  
15 served a Rule 30(b)(6) deposition notice on Thomson SA. Id. at Ex.  
16 25. Similarly, the requests for production at issue here were also  
17 promulgated in April 2014. Id. at ¶¶ 16, 20. Because Sharp and  
18 the other DAPs were pursuing the witnesses and materials at issue at  
19 an early date, the Court finds that Sharp and the other DAPs acted  
20 diligently in seeking the discovery at issue here.

21 Similarly, the Court cannot find a lack of diligence in DAPs'  
22 failure to pursue Hague Convention procedures earlier, or to  
23 otherwise seek judicial resolution of the parties' dispute about  
24 the applicability of the French Blocking Statute. Thomson argues  
25 that DAPs "have known since, at the very latest, May 14, 2014,"  
26 that Thomson interpreted the French Blocking Statute to bar  
27 production of the documents and witnesses DAPs seek. Deadline  
28 Opp'n at 5. But the record shows that within thirteen days of

1 receiving Thomson's objections, DAPs sought to meet and confer  
2 regarding this and other issues and the parties' attempts to  
3 resolve their dispute continued for almost two months. See Benson  
4 Decl. ¶¶ 33-41. After that meet and confer process was completed,  
5 DAPs filed the motion to compel before Judge Walker within days.  
6 Given Thomson's prior suggestion that it would work to produce  
7 documents and witnesses without demanding Hague Convention  
8 procedures where possible, the Court cannot fault DAPs for  
9 proceeding as they did. Furthermore, the Court certainly cannot  
10 conclude DAPs were not diligently pursuing discovery when they  
11 were, in fact, making an effort to resolve these issues without  
12 pursuing them before the Special Master or the Court.

13 Because the Court finds that Sharp and the other DAPs  
14 proceeded diligently in pursuing discovery against Thomson and good  
15 cause exists for an extension of the discovery deadline to permit  
16 document discovery and depositions to go forward, Sharp's motion to  
17 extend the discovery deadline to permit taking additional discovery  
18 from Thomson SA and Thomson Consumer is GRANTED. The cutoff of  
19 discovery with Thomson will therefore be extended sixty (60) days  
20 from the signature date of this order.

21  
22 **V. CONCLUSION**

23 The Court ORDERS as follows:

- 24 • Thomson's objection to the Special Master's report and  
25 recommendation regarding DAPs' motion to compel is  
26 DENIED.
- 27 • DAPs' motion to compel is GRANTED.
- 28 • Sharp is ORDERED to file within five (5) days of the

signature date of this order, a statement of not more than four (4) pages explaining whether it wishes to continue to press its motions for the issuance of letters of request. If Sharp does not file the statement within five days, the Court will deny the motions for letters of request as moot.

- DAPs' motion to extend time for the taking of discovery from Thomson SA and Thomson Consumer is GRANTED.

IT IS SO ORDERED.

Dated: October 23, 2014



UNITED STATES DISTRICT JUDGE